

## **Remarks**

Claims 1-35 are pending in this application. Claims 14, 24-25, 28, and 32 have been amended, new claim 36 has been added, and no claims have been canceled. Reconsideration of this application is respectfully requested in light of the above amendments and the following remarks.

### **Drawings**

The Examiner has objected to the drawings under 37 C.F.R. § 1.83(a), asserting that the limitation “when the tray is empty and is disposed in a cross stacked configuration with an upper like tray, the column recesses are adapted to receive a portion of the wall structure of the upper like tray” recited in claim 28 is not shown in the drawings. Applicant respectfully disagrees. With reference to FIG. 14, it is clearly shown that column recesses 50' receive a portion of side wall 14 of the upper tray. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this objection.

### **Rejection of Claim 32 Under 35 U.S.C. § 112**

Claim 32 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite due to the recitation of a positive relationship between the lower and upper trays. In response, Applicant has amended claim 32 to recite that “the upper surface of the wall structure of the tray is adapted to support the lower surface of the wall structure of the upper like tray” such that the upper tray is not part of the combination. This amendment is merely to address the rejection under 35 U.S.C. § 112 and adds no new element. Therefore, Applicant believes that claim 32, as amended, overcomes the rejection thereof under 35 U.S.C. § 112, and reconsideration and withdrawal of this rejection is respectfully requested.

### **Rejection of Claims 1-35 Under 35 U.S.C. § 102(b)**

Claims 1-35 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,842,572 issued to Apps et al. (“Apps ‘572”), U.S. Patent No. 5,651,461 issued to Apps et al. (“Apps ‘461”), U.S. Patent No. 5,529,176 issued to Apps et al. (“Apps ‘176”), U.S. Patent No. 5,501,352 issued to Apps (“Apps ‘352”), U.S. Patent No. 5,487,487

issued to Hammett ("Hammett"), U.S. Patent No. 4,978,002 issued to Apps et al. ("Apps '002"), and U.S. Patent No. 4,899,874 issued to Apps et al. ("Apps '874"). Applicant respectfully traverses this rejection for the reasons stated below.

In independent claims 1, 14, 24, 25, and 28, Applicant recites "a plurality of interior divider walls which project upwardly from the base and extend between at least one column and the wall structure, the divider walls having a double-walled construction." In his rejection of claims 1-35 under 35 U.S.C. § 103(a), the Examiner admits that the primary references (i.e., Apps '572, Apps '461, Apps '176, Apps '352, Hammett '487, Apps '002, and Apps '874) fail to disclose the divider wall being of double-walled construction (Office Action, p. 3), and therefore Applicant cannot see how claims 1-35 can be properly rejected under 35 U.S.C. § 102(b) over these references.

Indeed, Apps '572 and Apps '461 both disclose single-walled divider walls 29 (*see* FIGS. 1, 3, and the cross-sectional view of FIGS. 7-8). Likewise, Apps '176, Apps '002, and Apps '874 also disclose single-walled divider walls 29 (*see* FIG. 1 and the cross-sectional view of FIG. 2). Still further, Apps '352 discloses single-walled divider walls 46 (*see* FIGS. 1, 5-6, and the cross-sectional view of FIG. 7), and Hammett discloses single-walled divider walls (*see* FIG. 1 and the cross-sectional view of FIG. 3).

Therefore, Applicant believes that independent claims 1, 14, 24, 25, and 28 are patentably distinguishable over the above references. Accordingly, reconsideration and withdrawal of the rejection of these claims and their corresponding dependent claims under 35 U.S.C. § 102(b) is respectfully requested.

#### **Rejection of Claims 1-35 Under 35 U.S.C. § 102(e)**

Claims 1-35 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,073,793 issued to Apps et al. ("Apps '793"). Again, Applicant respectfully traverses this rejection. As stated above, Applicant recites "divider walls having a double-walled construction" in independent claims 1, 14, 24, 25, and 28, and the Examiner admits that Apps '793 fails to disclose this feature (Office Action, p. 3). As with the

references described above, Apps '793 discloses single-walled divider walls as shown in FIGS. 1 and 8. Accordingly, claims 1, 14, 24-25, and 28 are believed to be patentably distinguishable over Apps '793, and Applicant respectfully requests reconsideration and withdrawal of the rejection of these claims as well as their corresponding dependent claims under 35 U.S.C. § 102(e).

**Rejection of Claims 1-35 Under 35 U.S.C. § 103(a)**

Claims 1-35 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Apps '793, Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002, or Apps '874 in view of U.S. Patent No. 6,047,844 issued to McGrath ("McGrath") and U.S. Patent No. 3,334,767 issued to Cornelius et al. ("Cornelius"). Applicant respectfully traverses this rejection for the reasons stated below.

The Examiner admits that the primary references listed above fail to disclose the divider walls being of double-walled construction, but argues that McGrath and Cornelius teach such a feature. Applicant respectfully disagrees, and asserts that claim 1 requires that "the divider walls, the at least one interior column, the base, and the wall structure define a plurality of bottle retaining pockets, each pocket including at least one divider wall and sized to receive a single bottle therein." Independent claims 14, 24-25, and 28 recite a similar limitation, and have been amended herein to clarify that the bottle retaining pockets are each sized to receive a single bottle. As such, Applicant has defined "divider walls" to be interior walls which form part of a retaining pocket sized to hold a single bottle.

In contrast, McGrath discloses bottle support surfaces 46 which form a single partition 47 that faces side walls 27 and extends longitudinally within the crate (*see* col. 8, lines 38-54; FIG. 24). As shown in FIG. 24, several bottles may be placed on either side of partition 47, such that partition 47 does not form part of a retaining pocket sized to receive a single bottle as disclosed and claimed by Applicants. Therefore, if McGrath's partition is combined with any of the Apps '793, Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002, or Apps '874 references, Applicant's invention does not result. McGrath does not disclose or suggest the use of more than one partition, and does not appreciate the bottle

stability provided by Applicant's claimed invention wherein a double-walled divider wall is included in each bottle retaining pocket to provide greater support to the bottle received therein. Accordingly, McGrath and Apps '793, Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002, or Apps '874 cannot be properly combined to achieve Applicant's invention.

Also in contrast to Applicant's claimed invention, Cornelius discloses dividers 15 which create four equal compartments for holding 6-packs of bottles (*see* Abstract, FIG. 1). Cornelius states that "[w]ithin the receptacle area defined by the side and end walls 7 and 8, four generally rectangular cells or 6-pack receiving pockets 10 are provided by a central longitudinal reinforcing and divider rib 11 and a central transverse divider rib 12" (*see* col. 2, lines 42-46). Cornelius further discloses how each supporting rib 22 "advantageously centrally underlies a row of the 6-pack bottles" (*see* col. 3, lines 54-58), and how loading paperboard carton 6-packs into the cells 10 is facilitated by dividers 11 and 12 (*see* col. 5, lines 39-64). Therefore, Cornelius discloses dividers which separate packs of multiple bottles contained within a support structure (i.e., the 6-pack carton), and does not disclose or suggest the dividers forming retaining pockets for supporting individual bottles as disclosed and claimed by Applicants. Therefore, Applicant asserts that Cornelius and Apps '793, Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002, or Apps '874 cannot be properly combined to achieve Applicant's claimed invention. Cornelius does not recognize the problem solved by Applicant's invention, namely that the plurality of interior divider walls of double-walled construction provides a lighter tray having greater strength and stiffness, as well as greater support for the individual bottles in contact with each divider wall.

Therefore, Applicant believes that independent claims 1, 14, 24-25, and 28 are patentably distinguishable over the combination of Apps '793, Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002, or Apps '874 with either the McGrath or Cornelius references. Accordingly, reconsideration and withdrawal of the rejection of these claims, and their corresponding dependent claims, under 35 U.S.C. § 103(a) is respectfully requested.

**New claim**

New claim 36 has been added to further define the subject matter of the invention. Claim 36 includes “each divider wall defining two spaced apart surfaces for contacting bottles” and “bottle retaining pockets capable of providing multiple lateral contact points for each bottle received therein.” As discussed above, this combination is neither disclosed nor suggested by the cited references, and Applicant thus believes that claim 36 is also patentably distinguishable over these references.

### **Conclusion**

In summary, Applicant believes that the claims now meet all formal and substantive requirements and that the case is in appropriate condition for allowance. Accordingly, such action is respectfully requested. If a telephone conference would expedite allowance of the case or resolve any further questions, such a call is invited at the Examiner's convenience.

Please charge **\$1004.00** (to cover the Petition fee of \$920.00 and the additional claim filing fee of \$84.00), as well as charge any additional fees or credit any overpayments as a result of the filing of this paper, to our Deposit Account No. 02-3978 -- a duplicate of this paper is enclosed for that purpose.

Respectfully submitted,

**WILLIAM P. APFS**

By Stephanie M. Mansfield  
Stephanie M. Mansfield  
Reg. No. 43,773  
Attorney/Agent for Applicant

Date: December 10, 2002

**BROOKS & KUSHMAN P.C.**  
1000 Town Center, 22nd Floor  
Southfield, MI 48075  
Phone: 248-358-4400  
Fax: 248-358-3351

Attachment

## VERSION WITH MARKINGS TO SHOW CHANGES MADE

Claims 14, 24-25, 28, and 32 have been amended as follows:

14. (Amended) A low depth tray for storing and transporting bottles, comprising:

a floor member;

a unitary wall structure extending upwardly from the floor member, the wall structure having a lower wall portion including a plurality of windows formed therein and an upper wall portion including a plurality of upwardly projecting wall columns disposed between the windows; and

an interior grid structure disposed within the wall structure and connected thereto, the interior grid structure including a plurality of divider walls extending upwardly from the floor member and a plurality of spaced interior columns projecting upwardly from and interconnected by the divider walls, the divider walls having a double-walled construction and the interior columns having a height less than the height of bottles loaded in the tray[;],

wherein the interior grid structure, the wall structure, and the floor member together define a plurality of bottle retaining pockets each sized to receive a single bottle therein, and the wall columns and the interior columns each include at least one curved surface adapted to contact bottles received in the bottle retaining pockets.

24. (Amended) A plastic low depth tray for bottles, comprising:

a base having an upper surface and a lower surface, the upper surface including a plurality of spaced bottle support areas having a central portion at least partially surrounded by a curved perimeter portion;

a pair of opposed end walls extending upwardly from the base, each end wall including a handle formed therein;

a pair of opposed side walls extending upwardly from the base and integrally joined with the pair of opposed end walls, wherein the side and end walls are of double-walled construction and include a lower wall portion and an upper wall portion, the lower wall portion having a substantially flat outer wall, a generally curved inner wall, and a plurality of windows

formed therein, and the upper wall portion having a plurality of spaced wall columns projecting upwardly from the lower wall portion between the windows; and

an interior grid structure integrally formed with the end walls and the side walls, the interior grid structure including a plurality of spaced upwardly projecting interior columns disposed along a longitudinal axis of the tray and having a height less than the height of bottles loaded in the tray, and a plurality of double-walled divider walls extending upwardly from the base and interconnecting the wall columns and interior columns,

wherein the interior grid structure, side walls, end walls, and base together define a plurality of bottle retaining pockets each sized to receive a single bottle therein, each pocket including a bottle support area for supporting a base of each bottle and at least one column and at least one divider wall for providing lateral support for each bottle.

25. (Amended) A stackable low depth tray for storing and transporting bottles, comprising:

a base having an upper surface and a lower surface, the lower surface including a plurality of receiving areas;

a wall structure extending upwardly from the base, the wall structure including a lower wall portion having a lower surface and an upper surface, and an upper wall portion including a plurality of spaced, upwardly extending hollow wall columns;

a plurality of spaced, upwardly extending hollow interior columns disposed within the wall structure, the interior columns having a height less than the height of bottles loaded in the tray; and

a plurality of double-walled interior divider walls which continuously join adjacent columns to form, in combination with the base and the wall structure, a plurality of bottle retaining pockets each sized to receive a single bottle therein,

wherein when the tray is empty and is disposed in a stacked configuration with a like lower tray, the columns of the tray are adapted to receive at least a portion of the columns of the like lower tray and the lower surface of the lower wall portion of the tray is adapted to be supported on the upper surface of the lower wall portion of the like lower tray, and when the tray is loaded with bottles and is disposed in a stacked configuration with a like lower tray, the bottle retaining pockets of the tray are substantially aligned with the bottle



retaining pockets of the like lower tray, and the receiving areas of the tray are adapted to receive the closures of bottles loaded in the like lower tray.

28. (Amended) A stackable low depth tray for storing and transporting bottles, comprising:

a base having an upper surface and a lower surface, the upper surface including a plurality of bottle support areas and the lower surface including a plurality of receiving areas substantially aligned with the bottle support areas;

a wall structure attached to the base, the wall structure including a lower wall portion having a lower surface and an upper surface, and an upper wall portion including a plurality of spaced, upwardly extending wall columns;

a plurality of spaced interior columns generally disposed within the wall structure and extending upwardly to a height less than the height of bottles loaded in the tray, wherein the wall columns and interior columns disposed along a transverse axis of the tray each include a recess formed therein which extends along the transverse axis of the tray; and

a plurality of double-walled interior divider walls which interconnect adjacent columns to form, in combination with the bottle support areas and the wall structure, a plurality of bottle retaining pockets within the tray each sized to receive a single bottle therein and having substantially equal center-to-center distances,

wherein when the tray is empty and is disposed in a cross-stacked configuration with an upper like tray, the column recesses are adapted to receive a portion of the wall structure of the upper like tray, and when the tray is loaded with bottles and is disposed in a cross-stacked configuration with an upper like tray, the bottle [receiving] retaining pockets of the tray are aligned with the receiving areas of the upper like tray.

32. (Amended) The tray according to claim 28, wherein the column recesses extend downwardly to the height of the upper surface of the lower wall portion, and [the lower surface of the wall structure of the upper like tray is supported on] the upper surface of the wall structure of the tray is adapted to support the lower surface of the wall structure of the upper like tray.